Supreme Court, U.S.
FILED

09-762 DEC 22 2009

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No. _____

IN THE
Supreme Court of the United States

VERNON CLAVILLE
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

DATE: December 18, 2009

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QUESTIONS PRESENTED

I. Whether 2 months and 8 days or predicate acts is a substantial period of time to constitute a pattern of racketeering under the RICO statute?

II. Whether the continuity requirement for a RICO case was met by the government under the particular facts of this case?

PARTIES TO THE PROCEEDING
AND
CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 14.1(b), the parties to this case, other than the Petitioner, are:

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3. United States Court of Appeals for the Fifth Circuit.

No parties to this proceeding are corporations.

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—OPINION BELOW—

On October 9, 2009 the United States Court of Appeals for the Fifth Circuit rendered an unpublished opinion (No. 08-31030), attached as Appendix 1.

—JURISDICTION—

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1), being a petition for writ of certiorari after rendition of a judgment in a criminal case on October 1, 2009.

—CONSTITUTIONAL AND STATUTORY PROVISIONS—

The relevant statutory and constitutional provisions are set forth in appendix 3.

—STATEMENT OF THE CASE—

Nature of the Case

This is a Racketeer Influenced Corrupt Organizations Act ("RICO") case involving a state district court judge presiding over criminal drug cases accepting bribes to reduce bonds, where the underlying crime was a violation of state law, not federal law. The portion of the RICO statute applicable here is 18 U.S.C. §1962 (c), specifically as it relates to "continuity" in a "pattern of racketeering."

Proceedings Below

Petitioner Vernon ("Claville"), a Louisiana State Juvenile Court Judge, Michael Walker ("Walker"), a Louisiana State District Court Judge and a bail-bondsman, Larry Williams, were indicted under a one count indictment by a

federal grand jury for RICO violations.[1] The indictment against Larry Williams was dismissed.[2]

The indictment alleged that Claville committed 3 racketeering acts—in violation of Article 118 of the Louisiana Criminal Code regarding public bribery—over a period of 2 months and 8 days (May 6, 2007 through July 14, 2007).[3] At trial, the government offered evidence of 3 racketeering acts extending over the same period.[4] The bribes were given to release

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[1] Rec. #1, p. 26

[2] Rec. # 153, p. 353

[3] *Rec. #1, pp. 5,6,20,21*

[4] *Tr. Vol. XX: p. 2226, (L.1-3) wherein government, in closing, specifies the number of acts it presented and outlined the specific acts. Also, see Sentencing Transcript, p.3 (LL.8-9).*

probation holds for individuals arrested on drug charges.

During trial, immediately following the conclusion of the government's case-in-chief and again after the close of all evidence, Claville moved for a Federal Rules of Criminal Procedure Rule 29 Motion for a Judgment of Acquittal, arguing, in part, that: the government only alleged and demonstrated two months and eight days of predicate acts, which is not a "substantial period of time" in order to satisfy "continuity" in a "pattern of racketeering."[5] The district court denied Claville's motion, holding that the jury could infer that predicate acts, even though not alleged or shown, occurred over a longer period of

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[5] *Tr. Vol. XVII, pp. 1875, (L.17)-(L.21)*

time than the government demonstrated.[6] [Note: this was after the district court's instruction to the jury that Claville was not on trial for any acts not alleged in the indictment].[7] Claville objected to the court's ruling.[8]

Claville and Walker's trial resulted in the jury finding both guilty.[9] Following the preparation of a Pre-sentence Investigation Report ("PSR"), the district court stated that it found the PSR "accurate" and imposed, without any prior notice, a non-guideline sentence, sentencing Claville to 60 months of incarceration, 3 years supervised release and a fine of $165,474.60 after noting that the recommended

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[6] *Tr. Vol. XVII, p. 1896 (LL4-14)*
[7] *.Tr. Vol. XV p. 1671(LL.20-21)*
[8] *TR. Vol. XIX pp. 2165 (LL* 6-8)
[9] Vol. 3, p.809

guideline sentence was between 31 and 47 months and the recommended guideline fine was between $7,500.00 and $75,000.00.[10]

Claville then appealed to the Court of Appeals for the Fifth Circuit ("Fifth Circuit"), complaining—among 3 total complaints—that three closed-ended predicate acts occurring over a span of two months and eight days do not constitute a pattern of racketeering under RICO. The Fifth Circuit in affirming the district court ruled: "Here, the evidence shows there is no doubt that a jury could reasonably infer from the proven acts that Claville's . . . actions would

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[10] See Sentencing Transcripts, p. 12, (LL. 1-7) and p. 12 (LL.13-15 & LL. 22-25)

'project into the future with a threat of repetition.'"[11]

Effectively, the Fifth Circuit concluded that the bribery acts were open-ended and not closed-ended, even though no evidence was presented at trial, nor has there been any argument, that there was any plan by Claville and/or his accomplices to continue their activities in the future. This is contrary to the thinking of the district court—the district court apparently thought, along with everyone else in the courtroom, that the predicates were closed-ended when it held, in denying Claville Rule 29 Motion, that the jury could infer predicates occurring

[11] Appendix 1, page 5-6. Interior quote is the Fifth Circuit quoting *United States v. Richardson*, 167 F.3d 621, 626 (D.C. Cir.1999) (quoting H.J., *Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 241 (1989).

over a longer period of time than alleged in the indictment and demonstrated by the government.[12]

—REASONS FOR GRANTING THE WRIT—

The United States Court of Appeals for the Fifth Circuit has decided an important federal question in a way that conflicts with relevant decisions of other Courts of Appeals and this Court.

This case was brought under 18 U.S.C. § 1962(c), which states:

> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern

[12] Tr. Vol.XVII p. 1898 (LL.4-14)

> of racketeering activity or collection of unlawful debt. [Emphasis added].

Continuous criminal activity—continuity[13]—is required in a RICO case. *H.J. Inc. v. Northwestern Bell Telephone Company, et al*, 492 U.S. 229, 240 (1989) ("To establish a RICO pattern it must also be shown that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity," which this Court referred to as the "continuity requirement" in RICO). "'Continuity' is both a closed-and open-ended concept, referring to either a closed period of repeated conduct, or to past conduct that by its

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[13] *Websters New Universal Unabridged Dictionary, Second Edition* defines "continuity" as "the state or quality of being continuous."

nature projects into the future with a threat of repetition." *H.J. Inc.* at 241 (1989); citing *Barticheck v. Fidelity Union Bank/First National State*, 832 F.2d 36, 39 (CA3 1987). [Emphasis added].

Closed-Ended Continuity:

There is little question that the 2 months and 8 days of racketeering acts in Claville's case is not a substantial enough period of time to constitute a pattern of racketeering when the predicates are closed-ended. The Supreme Court in *H.J. Inc.* at 242, in addressing "continuity" in a "pattern of racketeering," stated:

> A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending

> over a <u>few weeks or months</u> and threatening no future criminal conduct do no satisfy this requirement. [Emphasis added].

The Circuits are almost unanimously in agreement that is takes more than a few months of closed-ended predicates to satisfy the continuity requirement:

- First Circuit—16 predicates over a 6 month period is "inadequate;" 17 predicates over 21 months was "not so long," nor were the predicates "so many;"[14]

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[14] See *Giuliano v. Fulton*, 399 F.3d 381, 390 (1st Cir.2005) ("Our case law suggests that the commission of 16 predicate acts over a <u>six-month period</u> is <u>inadequate</u> to establish a close-ended pattern of racketeering activity"), citing and quoting, at page 387, *Efron v. Embassy Suites (P.R.), Inc.*, 223 F.3d 12, 15 (1st Cir.2000) ("where plaintiff alleged 17 acts of wire and mail fraud over <u>21 months</u>, the time frame was '<u>not so long</u>,' nor were the predicate acts 'so many'"). [Emphasis added].

- Second Circuit—"Since *H.J. Inc.*, this Court has never held a period of less than two years to constitute a 'substantial period of time;'"[15]
- Third Circuit—12 months is not a "substantial period of time;"[16]
- Fourth Circuit—predicate acts over 1 year period do not form pattern;[17]
- Fifth Circuit—7 months of "predicate acts lack the 'continuity' element required to

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[15] *De Falco v. Bernas*, 244 F.3d, 286, 321 (2nd Cir.2000), *cert. denied*, 122 S.Ct. 207 (2001) ("Since the Supreme Court decided *H.J. Inc.*, this Court has never held a period of less than two years to constitute a 'substantial period of time'"). [Emphasis added].

[16] *Hughes v. Consol-Pennsylvania Coal Co.*, 945 F.2d 594, 611 (3rd Cir.1991) (holding that "twelve months is not a substantial period of time"), *cert. denied*, 115 S.Ct. 579 (1994). [Emphasis added].

[17] *Menasco v. Wasserman*, 886 F.2d 681, 684 (4th Cir.1989) (holding that predicate acts over one-year period do not form pattern). [Emphasis added].

establish a RICO pattern."[18] [Claville has not found a Fifth Circuit case where the Court held—in cases where, in the opinion, the time period could be calculated—that less than 2 years of closed-ended predicate acts constituted a substantial period of time].

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[18] See *Tel-Phonic Services, Inc. v. TBS Intern., Inc.*, 975 F.2d 1134, 1140 (5th Cir.1992). Also, see: *Abraham v. Singh*, 480 F.3d 351, 356 (5th Cir.2007) ("The Plaintiffs did not allege predicate acts 'extending over a few weeks or months and threatening no future criminal conduct'"[quoting *H.J. Inc.*]; rather, the predicates extended over at least a 2 year period); *U.S. v. Bustamante*, 45 F.3d 933, 941 (5th Cir.1995) (*citing H.J. Inc.* and finding that the predicates occurred over a 4 year period); *Tel-Phonic Services, Inc. v. TBS Intern., Inc.*, 975 F.2d 1134, 1140 (5th Cir.1992) ("predicate acts lack the 'continuity' element required to establish a RICO pattern" because the "alleged instances of fraud occurred only seven months apart."); and *Calcasieu Marine Nat'l. Bank v. Grant*, 943 F.2d 1453, 1464 (5th Cir.1991) (stating that "Short-term criminal conduct is not the concern of RICO" and quoting *H.J. Inc.* that "Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy [the pattern] requirement"). [In *Calcasieu Marine*, bracketed words are supplied by the Court]. [Emphases added].

- Sixth Circuit—17 months of predicates insufficient to show continuity;[19]
- Seventh Circuit—13 months not substantial under RICO;[20] and
- Ninth Circuit—concluded that no court of appeals has held the continuity requirement satisfied by a pattern lasting less than a year.[21]

The Second Circuit did an exhaustive search of the circuit decisions post *H.J. Inc.* and concluded:

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[19] *Vemco, Inc. v. Camardella*, 23 F.3d 129, 134 (6th Cir.1994) (finding that 17 months of predicate acts insufficient to show continuity). [Emphasis added].

[20] *Marshall International, Inc. v. Redstart, Inc.*, 935 F.2d 815, 821 (7th Cir.1991) (concluding that 13 months is not substantial under RICO). [Emphasis added].

[21] *Religious Technology Ctr. v. Wollersheim*, 971 F.2d 364, 366-367 (9th Cir.1992) ("[w]e have found no case in which a court [of appeals] has held the [continuity] requirement to be satisfied by a pattern of activity lasting less than a year"). [Emphasis added].

"The courts of appeals considering the issue have consistently refused to treat predicate acts occurring over a similar [11 months] (or even longer) period of time a 'pattern of racketeering activity' under RICO."[22]

Effectively, the government admitted in its Fifth Circuit brief that the predicates alleged and demonstrated at trial did not occur over a substantial enough period of time to constitute a pattern of racketeering, arguing for the first time that Claville's acts were open-ended versus closed-ended.[23]

Open-Ended Continuity:

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[22] *GICC Capital Corp. v. Technology Finance Group, Inc.*, 67 F.3d 463, 467-468 (2nd Cir.1995).

[23] Government's Appellate Brief, pp. 33 – 43, especially last paragraph beginning on page 41.

This Court in *H.J, Inc.* offered some examples of how the existence of a threat of continuing activity—open-ended continuity—might be proven:[24]

1. The predicates themselves might involve a distinct threat of such activity—for example, the "protection racket" whereby someone is to pay indefinitely in the future to keep his windows from being broken; and
2. By a showing that the predicate acts are the "regular way of doing business" for an ongoing entity such as a criminal association or legitimate business.

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[24] *H.J., Inc.* at 241.

H.J., Inc. is similar to this case. It involved an alleged violation of a state statute outlawing bribery, as does this case. The allegation in *H.J., Inc.* was that a state commission responsible for determining telephone rates was taking bribes from the telephone company to set rates favorable to it, and had been doing so over a period of at least 6 years. This Court, in reversing and remanding a court of appeals upholding of the district court's dismissal of the plaintiff's case for "failure to plead a pattern of racketeering activity," illustrated how either the closed-ended or open-ended continuity requirement might be met in *H.J., Inc.*:[25]

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[25] H.J., Inc. at 250.

- Closed-ended—"petitioners claim that the racketeering predicates occurred with some frequency over at least a 6-year period, which may be sufficient to satisfy the continuity requirement."
- Open-ended—"Alternatively, a threat of continuity of racketeering activity might be established at trial by showing that the alleged bribes were a **regular way . . . of conducting or participating in the conduct of the alleged and ongoing RICO enterprise**, the [Minnesota Public Utilities Commission]." [Emphasis added].

In this case, Claville's acts were all closed-ended—the bribe was paid, the jailed individual

putting-up the money got his probation hold lifted and the predicate act was concluded. There was no evidence that the person receiving the reduced bond had to continue to make payments to keep his bond reduced. There was no evidence that Claville and his accomplices planned to continue their activities in the future. There was no contention by the government that the "regular way of doing business" of the enterprise—the judicial branch of the Louisiana government—was to exact bribes to have bonds reduced. And, there was no allegation, showing or argument that Claville's regular way of participating in the conduct of the judicial branch was to exact bribes.

Fifth Circuits Concept of Open-Ended Continuity:

In this case, the Fifth Circuit held that the jury could infer open-ended continuity because of the "frequency" of Claville's illicit acts, stating *in toto*:

> The Government presented evidence of three (3) [9 for Walker] acts occurring over a period beginning May 3, 2007 and ending July 21, 2007. The Appellants assert that this two-and-a-half month period is insufficient to establish the continuity facet of a pattern of racketeering as required by RICO. Despite short duration, the courts have held that the continuity facet is met when there is "no doubt that a jury could reasonably infer from the frequency and escalating seriousness of the defendants' crimes that their 'past conduct . . . by its nature projects into the future with a threat of repetition.'" *United States v. Richardson*, 167 F.3d 621, 626 (D.C.Cir.1999) (quoting *H.J., Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 241, 109 S.Ct.

> 2893, 2902 (198[9])). Here, the evidence shows there is no doubt that a jury could reasonably infer from the proven acts that Claville's and Claville's actions would "project in to the future with a threat of repetition." As such, the Government met the continuity facet of a pattern of racketeering.[26]

In its ruling, the Fifth Circuit relied[27] upon *U.S. v. Richardson*, cited supra, which in turn relied upon *U.S. v. Busacca*, 936 F.2d 232, 238 (6th Cir.1991).[28] The defendant in *Richardson* was charged, along with others, with participating in four out of fifteen incidents in a crime spree which ". . . began with armed robbery of money and guns and escalated to shootings of

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[26] Appendix 1, page 5-6

[27] Appendix 1, page 5-6

[28] It should be noted that Busacca was cited by the Richardson court for the proposition that "The 'fortuitous interruption of [racketeering] activity such as by an arrest does not grant defendants a free pass to evade RICO charges."

robbery victims, bystanders, and rivals in crime."[29] The court in *Richardson* observed:[30]

> Richardson argues that because the four predicate acts in which he participated spanned only thirty-four days, and the entire crime spree only three and one-half months, the evidence does not satisfy H.J.'s "long-term criminal conduct" requirement. The government counters that had Richardson and his codefendants not been arrested, their criminal enterprise would have continued indefinitely, thus "threatening ... future criminal conduct." Quoting H.J., Inc. at 242.

The court then stated:[31]

> We agree with the government. The "fortuitous interruption of [racketeering] activity such as by an arrest" does not grant defendants a free pass to evade RICO charges. *United States v. Busacca*, 936 F.2d 232, 238 (6th Cir. 1991). As the district observed, the sheer number of

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[29] *Richardson* at 623.

[30] Id. at 626.

[31] Id.

> serious crimes, "which victimized dozens of persons and led to five deaths during the course of one summer, with no abatement of activity in sight," made the "threat of future criminality ... palpable." District Court Order at 17. We have no doubt that a jury could reasonably infer from the frequency and escalating seriousness of the defendants' crimes that their "past conduct ... by its nature projected into the future with a threat of repetition," thus satisfying RICO's pattern requirement. *H.J., Inc.*, 492 U.S. at 241. [Emphasis added].

In Claville's case, there was no frequency, the "escalating seriousness" is not logically implied by any of the evidence presented at trial; thus, Claville's conduct does not satisfy the apparent standard of the Richardson court: "that a jury could reasonably infer from the frequency and escalating seriousness of [Claville's] crimes that [his] 'past conduct ... by its nature projected

into the future with a threat of repetition,' thus satisfying RICO's pattern requirement."

It should be noted that the Fifth Circuit in Claville's case is the only court to cite *Richardson* for the proposition just discussed.

In *Busacca*, the Sixth Circuit reasoned that the "ability" to commit a crime forms implicit threat of continuity. *Busacca* is a case where Busacca was president of a teamsters' local and chairman of the board of trustees of some funds established to provide health, welfare and pension benefits to the members of the local.[32] Busacca committed six predicate acts of embezzlement (wrote himself checks) over approximately 2 ½ months to pay legal fees. The

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[32] Busacca at 234.

Sixth Circuit, in finding open-ended continuity, stated:[33]

> Busacca had demonstrated his complete ability to control the dispensation of monies from the Funds while doggedly pursuing and establishing his scheme to have his legal fees paid by the Funds. This ability, undiminished by his removal from the Funds as trustee, forms an implicit threat of continuity. [Emphasis added].

Thus, by the Sixth Circuit's reasoning, as long as one has committed a crime frequently in the past and retains—i.e., has not died or become incapacitated—the ability to commit the same crime again, then open-ended continuity is satisfied.

The *Busacca* court cited two cases in support of its holding that the ability to commit crimes in

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[33] Busacca at 238.

the future forms implicit threat of continuity: *Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local Union*, 883 F.2d 132, 144-45 (D.C.Cir.1989); *United States v. O'Connor*, 910 F.2d 1466, 1468 (7th Cir.1990). Neither of the cited cases support the *Busacca* court's holding. In *Yellow Bus Lines* the court, in allowing the plaintiff's to amend their petition, stated: "the 'continuity' of the alleged acts is a closer question because of the relatively short duration of the strike, these act could, if proved, establish 'a distinct threat of long-term racketeering activity, either explicit or implicit."[34] *O'Connor* is a case where a police officer was to receive set monthly payments to provide information as needed;

[34] Yellow Bus Lines at 145.

effectively, the court found that open-ended continuity was satisfied because it was shown at trial that there was a plan to continue the payments indefinitely into the future.[35]

—CONCLUSION—

In closing, it is clear from the evidence presented at trial, that the U.S. Government failed to prove beyond a reasonable doubt that the time period of the predicate acts were of such a substantial nature to satisfy the continuity requirement under the RICO Act.

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[35] *O'Connor* at 1467 – 1468.

The Petition for a writ of certiorari should be granted.

Respectfully Submitted

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 08-31030

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MICHAEL WALKER; VERNON CLAVILLE

Defendants-Appellants

Appeals from the United States District Court
for the Western District of Louisiana
USDC No. 5:07-CR-50097-1

Before JONES, Chief Judge, and PRADO and HAYNES, Circuit Judges.
PER CURIUM:*

this court, having carefully reviewed the parties' briefs and pertinent portions of the record in light of the parties' oral arguments, concludes there is no reversible error in the convictions or sentences. The contentions may be briefly addressed.

No. 08-31030

I. FACTS

Michael Walker ("Walker") and Vernon Claville ("Claville") (collectively the "Appellants")were both elected judges serving in

Caddo Parish, Louisiana. Together with their mutual friend Travis MCCullough, Appellants used their influence to direct money to A-Instant Bail Bonds in exchange for bribes. A jury found both Appellants guilty of violating the Racketeer Influence Corrupt Organizations Act, 18 U.S.C. § 1962(c) ("RICO"). At Sentencing, the judge found that both Appellants had an offense level of 21 with a criminal history category of I, yielding the advisory guideline range of 37 to 46 months. The Judge went beyond the guidelines and sentenced Walker to 120 months and Claville to 60 months of imprisonment. Walker and Claville appeal on several grounds.

II. DISCUSSION

Did the Government prove venue?

Claville asserts that Government did not prove venue as an element of the offense. Under federal law, the prosecution bears the burden of proving venue as an element of the offense, but "the prosecution need only show the propriety of the venue by a preponderance of the evidence, not beyond a reasonable doubt." *United States v. Carreon-Palacio,* 267 F.32d 381,390 (5th Cir.2001) (intentional quotations omitted). The indictment provides specific addresses showing Claville worked for Caddo Parish and that A-Instant Bail Bonds was based in Shreveport. Both Caddo Parish and Shreveport are in the Western District of Louisiana. No controverting evidence was offered. Thus, the prosecution

established venue by a preponderance of the evidence.

Did the Government prove continuity to show a pattern of racketeering?

the government presented evidence of ten acts occurring over a period beginning May3, 2007 and ending July 21, 2007. The Appellants assert that this two-and-a-half month period is insufficient to establish the continuity facet of a pattern of racketeering as required by RICO. Despite short durations, courts have held that the continuity facet is met when there is " no doubt that a jury could reasonably infer from the frequency and escalating seriousness of the defendants' crimes that their 'past conduct'...by its nature projects into future with a threat of

repetition.'". *United States v. Richardson*, 167 F.3d 621,626 (D.C. Cir. 1999) (quoting H.J., Inc v. Nw. Bell Tel. Co., 492 U.S. 229, 241, 109 S. Ct. 2893, 2902 (1983)). Here, the evidence shows there is no doubt that a jury could reasonably infer from the proven acts that Walker and Claville's actions would "project in to the future with a threat or repetition." As such, the Government met the continuity facet of a pattern of racketeering.

Is RICO's pattern requirement uncostitutionally vague?

Appellants claim that the RICO's pattern requirement is unconstitutionally vague because it is uncertain what period of time is required to constitute a pattern. This court reviews the

constitutionality of a statute *de novo.* United States v. Anderson 559 F.3d 348, 352 (5th Cir. 2009). A statute is unconstitutionally vague when it "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 127 (1926).

This claim has already been brought in exactly the same manner and was rejected by the Fifth Circuit. *Abell v Potamac Ins. Co.*, 946 F.2d 1160 (5th Cir. 1991). The *Abell* court held that "a party has standing to raise a vagueness challenge only insofar as the statute is vague as applied to *his* or *her specific conduct.*" Id at 1167

(emphasis added) (quotation omitted). On the facts proven to the jury, a person or ordinary intelligence in Appellants' positions would have had adequate notice of the criminality of his actions and RICO's reach. Accordingly, there is no vagueness as applied to Walker or Claville.

Can the judicial branch of Louisiana be considered an "enterprise" under RICO?

Appellants assert that the judicial branch of Louisiana cannot be an "enterprise" under 18 U.S.C § 1641 (a). It is well established that a government unit with multiple sub-departments can be a RICO enterprise. *United States v. Stratton*, 649 F.2d 1066, 1074 (5th Cir. July 1981). A state's judicial branch qualifies as an enterprise under RICO, and the evidence was

sufficient to satisfy the legal definition of a RICO "enterprise". The fact that Walker and Claville were judges in different departments is on no consequence.

Was there evidence of a sufficient nexus with interstate commerce under RICO?

Appellants assert that the Government did not meet RICO's requirement that the enterprise itself be engaged in interstate commerce of that its activities affect interstate commerce. 18 U.S.C. § 1962 (c). The court reviews this issue de novo. *Rogers v. McDorman*, 521 F.3d 381, 291 (5th Cir. 2008). The nexus with interstate commerce required by RICO is minimal. See *United States v. Delgado*, 401 F.3d 290, 297 (5th Cir. 2005). The Government presented evidence

that A-Instant Bail Bond Company wrote bonds through a company in California. This is a sufficient nexus with interstate commerce to meet the requirements of RICO.

Was Walker unduly prejudiced by witness testimony concerning Walker's drug use?

Walker contends that the trial court erred when it allowed McCullough to testify that he bribed Walker with Oxycontin instead of cash. This court rarely disturbs a Fed. Rule of Evid. 403 ruling and reviews the decision for a clear abuse of discretion. *United States v. Fields*, 483 F.3d 313, 354 (5th Cir. 2007). The judge introduced the Oxycontin evidence because it was intrinsic to charges that Walker accepted " cash and other things of value". The judge weighed

the probative value against the prejudicial effect and gave several instructions limiting the jury's ability to consider this evidence. Walker's argument addresses a completely unrelated topic and fails to consider the true basis of the judges ruling. Accordingly, this court find no clear abuse of discretion.

Was there sufficient evidence that Claville was an elected or appointed judge?

Claville asserts that the Government did not present sufficient evidence to prove that he was a juvenile court judge. This court reviews the sufficiency of the evidence de novo. *Rogers v McDorman*, 521 F.3d 381,391 (5th Cir. 2008). Sufficiency of the evidence challenges fail is a rational trier of fact could have found that the

Government proved the essential elements of the crime charged beyond a reasonable doubt. *United States v. Webster*, 960 F.2d 1301, 1307-08 (5th Cir. 1992).

The Government offered evidence that implicitly proved that Claville was a judge. Witnesses referred to Claville as a judge throughout the trial. Further, the Government produced witnesses who testified that they released specific defendants after received a call from Judge Claville, something only a judge could order. Accordingly, a reasonable jury could properly find that Claville was a judge through this circumstantial evidence.

Was there sufficient evidence that Claville accepted bribes?

Sufficiency of the evidence challenges fail if a rational trier of fact could have found that the Government proved the essential element of the crime charged beyond a reasonable doubt. *United States v. Webster*, 960, F.2d 1301, 1307-08 (5th Cir. 1992). McCullough, who solicited business for A-Instant Bail Bond Company, testified that he gave Claville money to release prisoners from juvenile court. Further, the Government presented audio and video recordings of McCullough and Claville setting up another person's release in exchange for money. A reasonable jury could properly find that Claville was bribed.

Were defendants' sentences unreasonable?

Walker and Claville assert that the district court did not sufficiently state its reasons under 18 U.S.C § 3553(a) for upwardly departing from the properly calculated guideline range. No procedural error is alleged, so this court reviews the substantial reasonableness of the sentence imposed under an abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 128 S. Ct. 586, 597 (2007). These claims are meritless; the judge explicitly considered the factors listed in § 3553(a) and held that both appellants deserved greater sentences because, among other reasons, they tainted the judicial process and undermined " the idea of equality in a court of law." The district court did not abuse its discretion.

III. CONCLUSION

For reasons stated in this opinion, the district court judgments of conviction and sentences are **AFFIRMED.**

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

JUDGMENT IN A CRIMINAL CASE

UNITED STATES OF AMERICA

V.

VERNON CLAVILLE

USM Number: 13846-035

Case Number: 07-50097-02

Filed on 10/3/08

Ronald J. Miciotto
Defendant's Attorney

THE DEFENDANT:

[ ] pleaded guilty to count(s)___

[ ] pleaded nolo contendere to counts(s)__which was accepted by the courts
[√] was found guilty on count(s)One of the Indictment after a plea of not guilty

The defendant is adjudicated guilty of these offenses:

Title and Section

18 U.S.C. § 1962(c)

Nature of the Offense

Violation of the Racketeer Influenced Corrupt Organizations Act

Count Numbers

1

Date Offense Concluded

July, 2007

The defendant is sentenced as provided in pages 2 thru 6 of this judgment.

The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

[ ] the defendant has been found not guilty on count(s)

[ ] Count(s)___ [ ] is [ ] are dismissed on the motion of the United States

IT IS ORDERED that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and the United States Attorney of any material changes in the defendant's economic circumstances.

October 3, 2008
date of imposition of judgment

s/Maurice Hicks
Signature of Judicial Officer

S. MAURICE HICKS JR. U.S. District Judge
Name and Title of Judicial Officer

10/3/08
date

DEFENDANT: VERNON CLAVILLE
CASE NUMBER: 07-50097-02

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 60 months.

[√] The court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant be properly evaluated at an appropriate medical facility within the next 60 days if at all practicable.

[√] The defendant is remanded to the custody of the United States Marshal.

[ ] the defendant shall surrender to the United States Marshal for this district[ ] at___ [ ]a.m. [ ] p.m. on _____.

[ ] the defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:[ ] before 2.p.m on ___[ ] as notified by the United States Marshall [ ] as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

_____

defendant delivered on 10/9/08 to FCI Fort Worth at 12:00 p.m., with a certified copy of this judgment.

UNITED STATES MARSHALL

by _____
DEPUTY UNITED STATES MARSHALL

DEFENDANT: VERNON CLAVILLE
CASE NUMBER: 07-50097-02

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

MANDATORY CONDITIONS (MC)

1. The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

2. The defendant shall not commit another federal, state or local crime.

3. The defendant shall not lawfully possess a controlled substance. The defendant shall refrain

from any unlawful use of a controlled substance. The defendant shall submit to one drug test within15 days of release from imprisonment and at lest two periodic drug tests thereafter, as determined by the courts.

4. [ ] the above testing condition is suspended, based on the courts determination that the defendant possesses a low risk of future substance absue. (check if applicable)

5. [√] the defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check if applicable)

6. [√] the defendant shall cooperate in the collection of DNA as directed by the probation officer.

7. [ ] the defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check if applicable)

8. [ ] the defendant shall participate in approved program for domestic violence. (Check if applicable)

9. [ ] if this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

10. [ ] the defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

(SC)

1) The defendant shall not leave the judicial district without permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within a the first five days of each month;

3) The defendant shall support his or her dependants and meet other family responsibilities;

4) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

5) The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view or the probation officer;

11) the defendant shall notify a probation officer within 72 hours of being arrested or questioned by law enforcement officer;

12) the defendant shall not enter into any agreement to act as in informer or a special agent

of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendants criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendants compliance with such notification requirement.

DEFENDANT: VERNON CLAVILLE

CASE NUMBER: 07-50097-02

SPECIAL CONDITIONS OF RELEASE (SP)

1. The defendant shall participate in a program of drug testing and/or substance abuse treatment under the guidance of the United States Probation Officer, as needed;

2. the defendant shall be subject to financial disclosure throughout the period of supervised release and shall provide US Probation with all requested financial documentation. the defendant shall report all household income to US Probation as requested;

3. in the event any financial obligations ordered are not paid prior to the commencement of

supervised release, the defendant shall make monthly payments at a rate not less than 25% of the defendant's gross monthly income, to be paid to the US District Clerk of Court. Payments shall begin within 30 days of release from imprisonment;

4. The defendant shall not work with or for any bail bond agency or its personnel. He shall have no contact with anyone in the bail bond business and shall not serve as a "consultant" or a " community relations specialist" or in any other capacity with a bail bond agency;

5. the defendant shall not be employed in any capacity by or work for the Judicial Branch of the State of Louisiana or the United States Courts;

6. the defendant shall not seek to qualify for or seek election to or serve as an elected or appointed public official.

DEFENDANT: VERNON CLAVILLE

CASE NUMBER: 07-50097-02

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal penalties under the schedule of payments on sheet 6.

Totals:	Assessment	Fine	Restitution
	$100.00	$165,474.60	$0.00

[ ] the determination of restitution is deferred until___. An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.

[ ] the defendant must make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664 (I), all nonfederal victims must be paid before the United States is paid.

Name of payee	Total Restitution Ordered	Priority or Percentage
Totals	$_____	
	$_____	

[ ] restitution amount is ordered pursuant to plea agreement $_____

[ ] the defendant must pay interest on restitution and a fine or more than $2500, unless the restitution or fine is paid in full before the

fifteenth day after the date of judgment, pursuant to 18 U.S.C § 3612(g).

[√] the court determined that the defendant does not have the ability to pay interest, and it is order that:

[√] the interest and penalty requirement is waived for the [√] fine [ ] restitution.

[ ] the interest requirement for the [ ] fine [ ]

restitution is as follows:

DEFENDANT: VERNON CLAVILLE

CASE NUMBER 07-50097-02

SCHEDULE OF PAYMENTS

Having assessed the defendants ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A. [√] lump sum payment of $165574.60 due immediately, balance due

[ ] no later than __ or

[√] in accordance with [ ] C, [ ] D, [ ] E, [√] F below:

B [ ] payment to begin immediately (may be combined with [ ]C [ ] D or [ ] F below or;

C [ ] payment in equal___(e.g. weekly, monthly, quarterly,) installments of $_____ over a period of

___(e.g. months or years) to commence___(e.g. 30 or 60 days) after the date of this judgment; or

D [ ] Payment in equal__(e.g. weekly, monthly, quarterly) installments of $___ over a period of ___(e.g. months or years) to commence___(e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E [ ] Payment during the term of supervision release will commence within__ (e.g. 30 or 60 days) after release from imprisonment. The court will . set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F [√] Special Instructions regarding the payment of criminal monetary penalties:

A fine in the amount of $165,474.60 is ordered to be paid to the US Clerk of Court and is due and payable immediately, which included consideration for the cost of incarceration during his period of confinement with the Bureau of Prisons and consideration for the cost of supervised release supervision.

The defendant shall make payments for any financial obligations ordered from any wages earned while in prison, in accordance with the Bureau of Prisons Financial Responsibility Program. Any portion of the financial obligations ordered that are not paid in full at the time of the defendants release from imprisonment, shall become a condition of his supervised release.

The court orders that any federal income tax refund payable to the defendant from the Internal Revenue Service will be turned over to the Clerk of Court and applied toward any outstanding balance with regard to the outstanding financial obligations ordered by the Court.

The defendant is ordered to liquidate all funds contained in his State of Louisiana Retirement Fund, listed in the PSR at about $120,000.00 and turn them over to the Clerk of Court to be attributed to the financial obligations ordered, within 30 days of this judgment.

Unless expressly order otherwise, if this judgment imposes imprisonment, payment of

monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

[ ] Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

[ ] The defendant shall pay the costs of prosecution

[ ] The defendant shall pay the cost of the following court costs:

[ ] The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, (8) costs, including cost of prosecution and court costs.

18 USC Sec. 1962

TITLE 18 – CRIMES AND CRIMINAL PROCEDURE

PART I – CRIMES

CHAPTER 96 – RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec. 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or partipating in the control of the issuer,

or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions

of subsection (a), (b), or (c) of this section.

28 USC Sec. 1254

TITLE 28 – JUDICIARY AND JUDICIAL PROCEDURE

PART IV – JURISDICTION AND VENUE

CHAPTER 81 – SUPREME COURT

Sec. 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are

desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.